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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/923,936	08/07/2001	Eric Romanski	2126-179	5169
20999	7590	11/08/2005	EXAMINER	
FROMMER LAWRENCE & HAUG 745 FIFTH AVENUE- 10TH FL. NEW YORK, NY 10151				
			ART UNIT	PAPER NUMBER

DATE MAILED: 11/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Notification of Non-Compliant Appeal Brief  
(37 CFR 41.37)**

Application No.

09/923,936

Applicant(s)

ROMANSKI ET AL.

Examiner

Andrew Wright

Art Unit

3617

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

The Appeal Brief filed on 07 April 2005 is defective for failure to comply with one or more provisions of 37 CFR 41.37.

To avoid dismissal of the appeal, applicant must file an amended brief or other appropriate correction (see MPEP 1205.03) within **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer.  
**EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136.**

1. ☐ The brief does not contain the items required under 37 CFR 41.37(c), or the items are not under the proper heading or in the proper order.
2. ☐ The brief does not contain a statement of the status of all claims, (e.g., rejected, allowed, withdrawn, objected to, canceled), or does not identify the appealed claims (37 CFR 41.37(c)(1)(iii)).
3. ☐ At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 41.37(c)(1)(iv)).
4. ☐ (a) The brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters; and/or (b) the brief fails to: (1) identify, for each independent claim involved in the appeal and for each dependent claim argued separately, every means plus function and step plus function under 35 U.S.C. 112, sixth paragraph, and/or (2) set forth the structure, material, or acts described in the specification as corresponding to each claimed function with reference to the specification by page and line number, and to the drawings, if any, by reference characters (37 CFR 41.37(c)(1)(v)).
5. ☐ The brief does not contain a concise statement of each ground of rejection presented for review (37 CFR 41.37(c)(1)(vi)).
6. ☐ The brief does not present an argument under a separate heading for each ground of rejection on appeal (37 CFR 41.37(c)(1)(vii)).
7. ☐ The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 41.37(c)(1)(viii)).
8. ☐ The brief does not contain copies of the evidence submitted under 37 CFR 1.130, 1.131, or 1.132 or of any other evidence entered by the examiner **and relied upon by appellant in the appeal**, along with a statement setting forth where in the record that evidence was entered by the examiner, as an appendix thereto (37 CFR 41.37(c)(1)(ix)).
9. ☐ The brief does not contain copies of the decisions rendered by a court or the Board in the proceeding identified in the Related Appeals and Interferences section of the brief as an appendix thereto (37 CFR 41.37(c)(1)(x)).
10. ☒ Other (including any explanation in support of the above items):

See attached communication.

*AW 11/7/05*

Andrew Wright  
Primary Examiner  
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***Non-Compliant Appeal Brief***

1. Applicant's Appeal Brief dated 4/7/05 is not compliant with 37 CFR 41.37. specifically, applicant has omitted the "Evidence Appendix" and the "Related Proceedings Appendix" as required by 37 CFR 41.37(c). See the BPAI Order Returning Undocketed Appeal to Examiner dated 11/4/05.
2. As a result, the Examiner's Answer dated 6/23/05 is vacated. Applicant is required to furnish a supplemental brief that is in compliance with 37 CFR 41.37(c).

***Information Disclosure Statement***

3. It is also noted in the BPAI Order Returning Undocketed Appeal to Examiner dated 11/4/05 that the record is not clear as to whether the examiner considered the information disclosure statement (IDS) submitted on 4/11/03. The submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement has been considered by the examiner. The references have been considered and the Form PTO 1449 has been initialed, signed, and dated.

***Conclusion***

4. Any inquiry concerning this communication should be directed to examiner Andrew D. Wright at telephone number 571-272-6690. The examiner can normally be reached Monday-Friday from 9:00 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, S. Joe Morano, can be reached at 571-272-6684. **The Central FAX Number for official communications is 571-273-8300.** The fax number directly to the examiner for unofficial communications is 571-273-6690.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Andrew D. Wright  
Patent Examiner  
Art Unit 3617

Handwritten signature of Andrew D. Wright and the date 11/7/05.